

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR - 4 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection Between Local Exchange)
Carriers and Commercial Mobile Radio)
Service Providers)

CC Docket No. 95-185

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

Robert S. Foosaner
Senior Vice President -
Government Affairs

Lawrence R. Krevor
Director - Government Affairs

Laura L. Holloway
General Attorney

Nextel Communications, Inc.
800 Connecticut Avenue, N.W.
Suite 1001
Washington, D.C. 20006
202-296-8111

Dated: March 4, 1996

No. of Copies rec'd _____
List ABCDE _____

TABLE OF CONTENTS

SUMMARY	i
I. INTRODUCTION	1
II. BACKGROUND	2
III. DISCUSSION	6
A. Bill And Keep Should Be Used To Implement Mutual Compensation On An Interim Basis	6
1. Advantages of Interim Bill and Keep.	6
2. The Scope of Bill and Keep	7
3. Tariffing Bill and Keep Interconnection Arrangements.	10
B. The Commission Has Jurisdiction To Impose Interim Bill And Keep Obligations For Both Interstate And Intrastate Interconnection.	10
1. Section 332 Of The Communications Act	11
2. Inseverability of Interstate and Intrastate Services	14
3. Impact of the Telecommunications Act of 1996.	16
C. A Long-Term Mutual Compensation Solution Must Be An Economically Efficient, Cost-Based Methodology That Encourages Efficient Use Of Systems, And Results In Increased Competition.	17
IV. CONCLUSION.	18

SUMMARY

In response to the Notice Of Proposed Rule Making ("NPRM") of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") files these Comments in support of the Commission's tentative conclusion to impose interim "bill and keep" requirements on Local Exchange Carrier ("LEC")-to-Commercial Mobile Radio Service ("CMRS") interconnection arrangements. An interim bill and keep policy is necessary to level the playing field between LECs and CMRS carriers, and as a first step to incent the LECs to negotiate "reasonable and fair interconnection" arrangements, based on mutual compensation, with CMRS carriers.

Bill and keep is the appropriate interim measure because it offers an equitable short-term solution to the disparate interconnection charges imposed on CMRS carriers as a result of LEC market power, is relatively straightforward, and can be implemented without the need for operational or billing system overhauls or other administrative overhead. Bill and keep will lower market entry barriers that would otherwise slow the development of CMRS competition and will create incentives for CMRS providers and LECs to implement efficient call termination arrangements -- since each carrier would be paying its own termination costs for traffic generated by the other.

Bill and keep will only be effective, however, if imposed on all interconnection arrangements, pursuant to the Commission's plenary jurisdiction over LEC-CMRS interconnection. An interim bill and keep policy that exempts certain types of LEC-CMRS

interconnection (e.g., interconnection to an access tandem) or certain costs (e.g., transport costs) would create loopholes for LECs to continue to avoid genuine mutual compensation-based interconnection agreements. Moreover, the Commission must preempt state regulation of LEC-CMRS interconnection rates. The existence of up to 50 different interconnection regimes would frustrate the Commission's and Congress' goal of creating nationwide, seamless wireless networks.

The Commission has plenary authority, pursuant to Sections 2(b) and 332 of the Communications Act of 1934 (the "Act"), to preempt state regulation of LEC-CMRS interconnection rates, charges, terms and conditions. The Commission's authority was not limited by the Telecommunications Act of 1996, which specifically states that its interconnection requirements are in addition to the existing provisions of Sections 332 and 201 of the Act.

It is increasingly difficult, if not impossible, to separate interstate and intrastate wireless telecommunications services. The Commission should not attempt to create an artificial demarcation between interstate and intrastate interconnection so that "intrastate" LEC-CMRS interconnection can be subject to state regulation. This approach would have little to do with the realities of the wireless telecommunications marketplace and would only increase the operational and administrative costs of wireless carriers. The Commission should instead exercise its plenary authority to preempt inconsistent state interconnection regulations

and impose a single consistent approach for all LEC-CMRS interconnection agreements.

Once interim bill and keep requirements are in place, the Commission and the industry can fully investigate the costs of LEC-CMRS interconnection and arrive at fair and reasonable long-term arrangements based on mutual compensation. Adopting an interim bill and keep approach, however, is absolutely necessary to create an immediate measure of reasonableness in LEC-CMRS interconnection charges, to reduce disincentives to the expeditious deployment of competitive CMRS services, and to assure more effective use of the public telephone network.

RECEIVED

MAR - 4 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Interconnection Between Local Exchange) CC Docket No. 95-185
Carriers and Commercial Mobile Radio)
Service Providers)

To: The Commission

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") respectfully submits these Comments on the Commission's Notice Of Proposed Rule Making ("NPRM") in the above-captioned proceeding.^{1/}

The Commission issued this NPRM because it is "concerned that existing general interconnection policies may not do enough to encourage the development of [Commercial Mobile Radio Services ("CMRS")]. . ."^{2/} Recognizing that "[Local Exchange Carriers ("LECs")] unquestionably still possess substantial market power in the provision of local telecommunications services," the Commission concluded that CMRS providers must be offered prices, terms and conditions of interconnection that will not "buttress" LEC market

^{1/} Notice Of Proposed Rule Making, CC Docket No. 95-185, FCC 95-505, released January 11, 1996.

^{2/} Id. at para. 2.

power, but will instead promote the competitiveness of CMRS services.^{3/}

Nextel agrees that existing LEC-CMRS interconnection policies are deficient in promoting the expeditious development of CMRS, and for the reasons discussed further herein, fully supports the Commission's tentative conclusion to impose an interim "bill and keep" interconnection plan on LEC-to-CMRS interconnection.^{4/} With appropriate parameters, an interim bill and keep policy would provide an equitable and competitive approach to LEC-to-CMRS interconnection while the industry and the Commission carefully evaluate long-term LEC-CMRS mutual compensation interconnection alternatives. At the same time, bill and keep would lower entry barriers that currently hinder the development of CMRS providers.

II. BACKGROUND

Nextel is the largest provider of Specialized Mobile Radio ("SMR") and wide-area SMR services in the Nation. Nextel's wide-area SMR services employ digital GSM-based technology to offer a combination of wireless telecommunications services to mobile work groups including mobile telephone, paging and dispatch services. Nextel's wide-area SMR services, as well as its traditional SMR services that are interconnected to the Public Switched Telephone Network ("PSTN"), were reclassified as CMRS by the Omnibus Budget

^{3/} *Id.*

^{4/} *Id.* at para. 3. Nextel believes that this interim policy should be applied to LEC interconnection with all CMRS providers. However, the Commission should be aware of and accommodate the spectrum and operational distinctions among some CMRS providers, e.g., analog SMRs and paging.

Reconciliation Act of 1993 ("Budget Act").^{5/} As a CMRS provider, Nextel is entitled to "reasonable and fair interconnection" with the LEC to ensure access to the PSTN.^{6/} Nextel, moreover, is entitled to receive mutual compensation from the LEC for terminating land-to-mobile traffic.^{7/} Mutual compensation would ensure that Nextel is compensated by the LEC for wireline traffic that is terminated on Nextel's network -- just as Nextel currently compensates the LEC for terminating Nextel's mobile-originating traffic on LEC networks.

Through its subsidiaries, Nextel provides digital wide-area SMR services in, among other places, California, New York, New Jersey, Boston, Detroit, Baltimore/Washington, D.C., Chicago, Denver, Atlanta, and Seattle/Portland. Among all of Nextel's interconnection arrangements with LECs in these areas, not a single LEC has agreed to compensate Nextel for terminating wireline-

^{5/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI Section 6002(b), 107 Stat. 312, 392 (1993). Traditional SMR services are not always interconnected to the PSTN, and therefore do not require interconnection with a LEC. Nextel provides traditional analog SMR services -- both interconnected and dispatch-only -- and interconnected, digital wide-area SMR services. Only interconnected SMR services were reclassified as CMRS and are potentially impacted by this rule making.

^{6/} Second Report and Order, 9 FCC Rcd 1411 (1994) at para. 230.

^{7/} *Id.* at para. 232. ("the principle of mutual compensation shall apply, under which LECs shall compensate CMRS providers for the reasonable cost incurred by such providers in terminating traffic that originates on LEC facilities.") See also Cellular Case, Declaratory Ruling, 2 FCC Rcd 2910 (1987); Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 2369 (1989). In this order, adopted ten years ago, the Commission concluded that cellular carriers were entitled to mutual compensation from the LEC.

originated calls on Nextel's wireless network.^{8/} Not only have interconnection charges been one-sided, LEC interconnection rates vary significantly from jurisdiction to jurisdiction and among different LECs. Even among neighboring states with the same LEC, rates vary substantially.^{9/}

Thus, under the *status quo*, Nextel cannot recover any of its termination costs for LEC-originating traffic, despite the fact that Nextel has constructed a network including the necessary switching, transport and base stations to enable LEC customers to call mobile customers. A wireless network includes facilities analogous to the central switches, transport facilities and end offices of the local wireline exchange. Typically, a CMRS carrier's cost of terminating traffic is higher than the LECs, which have enjoyed years of regulated monopoly status to recover costs and amortize plant and equipment. Moreover, there has been significantly greater traffic in the mobile-to-land direction as wireless subscribers attempt to hold down their costs by limiting

^{8/} For example, Nextel has interconnection agreements with Bell Atlantic in the Baltimore-Washington market, with NYNEX in the New York market, and with Southern New England Telephone Company in Connecticut. None compensates Nextel for any traffic originated on their networks and terminated on Nextel's network.

^{9/} This is particularly well-illustrated by the widely varying interconnection charges in the New England states where Nextel compensates NYNEX for mobile-to-land calls at rates ranging from \$.01 to \$.05 per minute. In each state, Nextel also must pay NYNEX for LEC-originated calls terminated on Nextel's system. In Massachusetts, Nextel pays .008389 per peak minute for calls terminated on Nextel's network; in Rhode Island, Nextel pays \$.044595 per peak minute; in New Hampshire, \$.04 per peak minute; in Vermont, \$.0473078 per minute; and in Maine, \$.093315 per daytime minute.

incoming calls. Yet, the *status quo* has forced Nextel and other CMRS carriers -- due to the leverage wielded by the LEC's bottleneck access to the PSTN -- not only to forego mutual compensation, but in some cases, to compensate the LEC for land-originating traffic terminated on their wireless systems.^{10/}

The current state of "CMRS pays, LECs do not," has created a cost imbalance which places CMRS providers at a competitive disadvantage. For nearly ten years, the Commission has required LECs to provide reasonable, balanced, equitable interconnection arrangements based on mutual compensation; yet, LECs have honored this obligation only in the breach. New entrants like Nextel have had to be satisfied with obtaining interconnection on rates, terms and conditions that appear comparable to other CMRS carriers; they have been unable to overcome the market power of the LEC bottleneck local exchange access providers and demand mutual compensation. The NPRM takes the necessary first steps to recognize that CMRS systems are "peer systems" of the LECs and are entitled to compensation for the services that they provide. By adopting an interim bill and keep interconnection policy, the Commission can take immediate effective action to enable wireless providers --

^{10/} In its earlier NPRM on interconnection, the Commission recognized the reluctance of LECs to negotiate fair interconnection agreements with CMRS providers. See Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54, FCC 94-145, released July 1, 1994 ("NPRM and NOI"), at paras. 102-105. To Nextel's knowledge, LECs have rarely, if ever, agreed to provide reciprocal compensation to CMRS providers -- a blatant demonstration that they continue to wield monopoly, bottleneck access to the PSTN. This is in sharp contrast to recent initiatives in a number of states for LEC interconnection with competitive local access providers on a bill and keep basis. NPRM at para. 24.

particularly new entrants -- to more readily enter the marketplace and provide competitive services.

III. DISCUSSION

A. Bill And Keep Should Be Used To Implement Mutual Compensation On An Interim Basis

1. Advantages of Interim Bill and Keep

If implemented under the proper parameters, as discussed below, bill and keep would offer the Commission an equitable interim solution to achieving a reasonable and balanced LEC-to-CMRS interconnection policy. Bill and keep is relatively straightforward, i.e., it imposes a terminating charge of zero for both mobile-to-land and land-to-mobile traffic. Therefore, since the LEC need not bill the CMRS carrier and the CMRS carrier need not bill the LEC, it could be implemented without the need for operational or billing system overhauls, thereby minimizing administrative costs for both carriers.

Bill and keep would level the playing field for CMRS carriers who have never had an opportunity to recover the costs of terminating LEC-originated traffic. Further, it would create strong inducements for LECs to negotiate with CMRS providers to determine the most economically efficient way to achieve non-discriminatory, "reasonable and fair" long-term LEC-to-CMRS interconnection arrangements.^{11/} At the same time, bill and keep would lower market entry barriers for CMRS carriers and provide them new competitive opportunities.

^{11/} See Second Report and Order, *supra*. fn. 6, at para. 230.

2. The Scope of Bill and Keep

The NPRM tentatively concludes that a bill and keep approach (*i.e.*, a zero rate for terminating traffic) should be applied with respect to local switching facilities and connections to end users during an interim period.^{12/} This appears to be a generic definition intended to include the comparable facilities of the LEC and CMRS networks. More specifically, however, the NPRM states that a bill and keep arrangement represents the best interim solution "with respect to terminating access from LEC end offices to LEC end-user subscribers, and with respect to terminating access from equivalent CMRS facilities to CMRS subscribers" for both peak and off-peak periods.^{13/} It also tentatively concludes that CMRS carriers should pay flat rate charges for LEC-provided dedicated transmission facilities connecting LEC and CMRS networks (*i.e.*, between CMRS mobile switching centers (MTSOs) and LEC end offices or, where access tandems are used, between CMRS MTSOs and LEC access tandems) and traffic sensitive charges for shared facilities used to provide transport from LEC access tandems to LEC end offices, as well as the costs of tandem switching.^{14/}

If adopted as described above, bill and keep would not achieve the Commission's goal of preventing "incumbent LECs that possess market power from charging excessively high interconnection

^{12/} NPRM at para. 25.

^{13/} *Id.* at paras. 39, 60 and 62.

^{14/} *Id.* at paras. 63 - 65.

rates."^{15/} Bill and keep would only apply to LEC interconnection charges for LEC end office switching and transport from LEC end offices to the ultimate end user. CMRS carriers would still be required to pay charges for transport between CMRS and LEC networks, including transport to LEC access tandems, tandem switching, and transport from access tandems to subtended end offices. This would not check LEC market power abuse to shift charges from the bill and keep interconnection elements to those not included in bill and keep, thereby permitting the LECs to continue charging high interconnection rates.^{16/} The complexity of accurate LEC cost determination to prevent this "shell game" would require so much time and effort that bill and keep, as described above, would provide little, if any, interim benefit to CMRS carriers.

The past decade of LEC refusal to negotiate mutual compensation for interconnecting CMRS providers requires that the Commission adopt sufficiently broad bill and keep requirements to effectuate its equitable interconnection objectives.^{17/} End office bill and keep is unduly limited; it would exclude the most

^{15/} *Id.* at para. 61.

^{16/} For example, if limited only to end office interconnection, the LECs would have an incentive to require access tandem-only interconnection for CMRS carriers, or to shift costs to other interconnection elements not included in the bill and keep requirement.

^{17/} The Commission has already recognized the "possible abuses of market power of the LECs. . ." NPRM at para. 88. See also NPRM at paras. 8-14. Nextel believes that a narrowly-defined bill and keep requirement invites continued market power abuses by the LECs.

prevalent CMRS-to-LEC interconnection arrangements -- access tandem interconnection.^{18/} Bill and keep should apply to any form of interconnection between LECs and CMRS carriers, encompassing interconnection at access tandems, interconnection at end offices, or interconnection at other points on the LEC's network. Interim bill and keep should apply to transport charges between the CMRS carrier (MTSO) and the LEC network, tandem switching, transport to subtended end offices, end office switching and transport to end-users. Exclusion of transportation charges would provide LECs a loophole for "rearranging" interconnection rate elements to shift charges from included elements and maintain non-reciprocal compensation.

As discussed above, despite contrary Commission requirements, for nearly ten years the LECs have imposed CMRS interconnection agreements without mutual compensation. The Commission should mandate interim bill and keep requirements that encompass all LEC-to-CMRS interconnection arrangements and impose a zero termination charge for both LEC and CMRS carrier termination of each other's traffic.

3. Tariffing Bill and Keep Interconnection Arrangements

In the NPRM, the Commission seeks comment on whether interconnection arrangements should be tariffed, freely negotiated

^{18/} As a new entrant CMRS provider, Nextel does not generate enough traffic to justify high capacity interconnection to a LEC's end offices; accordingly, like most CMRS providers, the majority of Nextel's traffic is delivered to LEC access tandems.

or negotiated under publicly-filed interconnection contracts.^{19/} Nextel agrees with the Commission's tentative conclusion that, given the potential for LEC abuses of market power, "interconnection compensation arrangements should be made publicly available in order to foster competition and advance the public interest."^{20/}

To ensure the most publicly available information and the most consistent bill and keep interconnection arrangements from LEC-to-LEC and from state-to-state, Nextel supports the use of tariffs. Tariffs should be filed at the Commission; not at the state level. This would provide the plethora of nationwide and regional CMRS carriers "one-stop-shopping" for interconnection arrangements which would enhance their ability, as well as the Commission's, to determine whether just, reasonable and non-discriminatory interconnection rates, terms and conditions are being offered to all CMRS providers.

B. The Commission Has Jurisdiction To Impose Interim Bill And Keep Obligations For Both Interstate And Intrastate Interconnection

In the NPRM, the Commission offers three alternatives for enforcing its proposed interconnection policies: (1) standards that would directly govern interstate LEC-to-CMRS interconnection and serve as a "model for state commissions" in regulating intrastate LEC-to-CMRS interconnection;^{21/} (2) a mandatory

^{19/} NPRM at paras. 88-94.

^{20/} *Id.* at para. 95.

^{21/} NPRM at para. 108.

federal policy framework on LEC-to-CMRS interconnection policies from which state commissions could choose any of a wide range of interconnection options;22/ and (3) specific federal interconnection standards that would be mandated on interstate and intrastate interconnection arrangements.23/ Nextel agrees with the Commission's tentative conclusion that it has "sufficient authority," in light of its plenary jurisdiction over LEC-CMRS interconnection, to adopt any of the three, including a complete preemption of state interconnection regulation. It is this third alternative that Nextel believes would further the public interest by fostering the rapid development of nationwide competitive telecommunications networks.24/

1. Section 332 Of The Communications Act

Nextel supports the positions of Cox Communications and Comcast that Section 332 of the Communications Act of 1934 ("Communications Act"),25/ expressly preempts state regulation of rates and entry of CMRS carriers, including the rates of

22/ Id. at para. 109.

23/ Id. at para. 110.

24/ Without explicit preemption, state regulation of LEC-CMRS interconnection may not facilitate the Commission's goal of rapidly developing nationwide wireless networks. In fact, the Connecticut Department of Public Utilities ("DPU") has explicitly concluded that CMRS providers are not entitled to mutual compensation for LEC-CMRS traffic, implicitly rejecting the Commission's stated rules and policies. See Draft Decision of the DPU, Docket No. 95-04-04, September 1, 1995.

25/ 47 U.S.C. Section 151 et seq.

interconnection with LECs.^{26/} Moreover, Congress vested all LEC-CMRS interconnection authority with the Commission when it amended Section 2(b) of the Communications Act to exclude Section 332 from the realm of the bifurcated federal-state authority over traditional wireline carriage.^{27/} Therefore, as the Commission recognizes in the NPRM, to the extent any state interconnection policy is inconsistent with the Commission's interconnection policies, the state is expressly preempted from regulation.^{28/} Thus, if a state's LEC-to-CMRS interconnection policy does not provide for reasonable interconnection and mutual compensation, including interim bill and keep, if adopted by the Commission, it would be "inconsistent with the federal right to interconnection" and therefore preempted.^{29/}

The legislative history of Section 332(c) supports the Commission's tentative conclusion that it can preempt inconsistent state interconnection policies. The House Report on Section 332(c) states that Congress "considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a

^{26/} *Id.* at Section 332 (c) (3) (A).

^{27/} *See* 47 U.S.C. Section 152(b).

^{28/} *Id.* at para. 111.

^{29/} *Id.* *See also* MCI Telecommunications Corp. v. FCC, No. 95-70751, January 31, 1996 (9th Circuit) (Commission properly preempted state caller identification ("Caller ID") rules that were inconsistent with federal Caller ID rules and would thereby negate the Commission's goals).

seamless national network."^{30/} Without preemption, states would be free to impose their own obligations on what they deem to be "intrastate" interconnection and thereby delay, rather than advance, the development of nationwide wireless networks -- an expressed goal of Congress in the Budget Act.

The Budget Act, which created the CMRS regulatory classification, put in place a structure for the development of nationwide wireless systems, such as Nextel's. Nextel is developing a nationwide seamless digital mobile service requiring interconnection with the PSTN throughout the Nation. A tangle of 50 different interconnection policies, varying from state-to-state -- some requiring individually negotiated agreements with each LEC, others using tariffs (which may have to be modified for the CMRS carrier) -- is a prescription for delay, higher costs and unnecessary administrative complexity. The difficulty of fine-tuning interconnection agreements, billing methods and administrative tasks from state-to-state would impose unnecessary costs that will be passed on to customers and reduce competition without countervailing public benefits. This would delay and complicate not only Nextel's nationwide service, but the wide-area, regional and nationwide service plans of Personal Communications Services auction winners and 900 MHz SMR auction winners. To fulfill the intent of Congress in the Budget Act, *i.e.*, promote the rapid development of nationwide wireless networks, the Commission must exercise its plenary authority over CMRS interconnection

^{30/} H.R. Rep. No. 111, 103rd Cong., 1st Sess. 261 (1993).

obligations. Section 332 provides sufficient federal authority to preempt state regulation of LEC-CMRS, and by doing so, the Commission would be furthering a policy that promotes competitive telecommunications services, advances the introduction of new innovative wireless services, and furthers the public interest by laying the foundation for a competitive telecommunications marketplace.

2. Inseverability of Interstate and Intrastate Services

The Commission's authority to impose an interim bill and keep requirement on all interconnection arrangements flows from the ever-increasing inseverability of intrastate wireless services from interstate wireless services.^{31/} First, the same physical LEC interconnection controls the telephone call, regardless of whether intra or interstate. Second, in the wireless world of Major Trading Areas ("MTAs"), Basic Trading Areas ("BTAs"), Bureau of Economic Analysis Economic Areas ("EAs"), roaming agreements, and radio towers that serve subscribers across state lines, it can be impossible to determine whether a call is actually intrastate or interstate simply by looking to where the call is originated and/or delivered. The Commission's CMRS licensing policies expressly ignore state boundaries and encourage multi-state telecommunications operations. Any attempts to segregate transmissions on these multi-state systems would be artificial and

^{31/} See Louisiana Public Service Commission v. FCC, 467 U.S. 355 (1986).

in complete contradiction to the evolution of today's wireless telecommunications marketplace.

For example, the inseverability of wireless communications for jurisdictional purposes is evidenced by a single phone call that continues as a user travels through different jurisdictions. For example, a Nextel user in Maryland could initiate a phone call to a District of Columbia ("D.C.") number. On his/her drive into work in D.C., he/she might choose to drive through Virginia into D.C. while continuing the same phone call. The call was initiated as an interstate (intraLATA) call in Maryland to D.C., remained interstate through Virginia, and ends as an intrastate communication between parties located in D.C.^{32/}

Is this call intrastate or interstate? At what point does it change from one to the other? How can these calls accurately be divided between intrastate and interstate jurisdictions? Should the phone number dictate the jurisdiction of the call, or should actual system operation dictate the jurisdiction of the call? Perhaps most importantly, are the administrative complexities and increased costs of tracking such calls to maintain bifurcated federal/state jurisdiction warranted by tangible, demonstrable public benefits? Congress answered these questions in the Budget

^{32/} To further complicate the jurisdictional analysis of this particular phone call, the mobile customer while in Virginia may be communicating through a cell site located in D.C. that covers the major roads on the Virginia side of the Potomac River. Further, efficient wireless system architecture may place the mobile switching center in a remote jurisdiction from system users.

Act by giving the Commission plenary authority over the rates, terms and conditions of LEC-CMRS interconnection.

Wireless telecommunications systems were not intended to be constrained by state boundaries. Providers are licensed in geographic areas with no relation to state boundaries and radio towers radiate across state boundaries. Wireless carriers are investing billions of dollars to construct and implement systems that offer nationwide, seamless services. Any attempt to separate wireless telecommunications services between intrastate and interstate is at odds with the public interest since it discourages their development and thereby robs the public of a more competitive telecommunications marketplace.

3. Impact of the Telecommunications Act of 1996

The Telecommunications Act of 1996 ("TCA"),^{33/} while addressing the general interconnection obligations of LECs, did not amend or affect Section 332(c)'s Commission jurisdiction over CMRS interconnection. The TCA was intended to radically change the regulatory structure of the wireline telephone industry, while maintaining the wireless industry's regulatory framework created just three years ago in the Budget Act. Had Congress intended to repeal the CMRS regulatory framework -- including the Commission's plenary jurisdiction over CMRS interconnection policy -- it would have explicitly stated it.

Nextel recognizes that the TCA establishes detailed pricing and interconnection standards for LECs, which it leaves to the

^{33/} Pub. L. No. 104-104, 110 Stat. 56 (Feb. 9, 1996).

states to enforce.^{34/} However, the TCA also states that this provision on LEC interconnection is not to be construed as limiting or otherwise affecting the Commission's Section 201 authority to require interconnection by common carriers.^{35/} On the contrary, this provision is in addition to the Commission's existing authority in Sections 201 and 332 of the Communications Act. Because LEC-to-CMRS interconnection is firmly grounded in Sections 201 and 332, it is not impacted by the TCA.

C. A Long-Term Mutual Compensation Solution Must Be An Economically Efficient, Cost-Based Methodology That Encourages Efficient Use Of Systems, And Results In Increased Competition

As discussed above, Nextel emphatically supports the Commission's tentative conclusion to impose an interim bill and keep policy on LEC-to-CMRS interconnection arrangements. Its immediate application would bring an end to the existing inequities of LEC-to-CMRS interconnection arrangements, would allow CMRS providers to more readily enter the marketplace under interconnection terms that promote their competitiveness, and would provide the impetus for all participants to discuss and evaluate long-term mutual compensation arrangements.

LECs are obligated to provide mutual compensation as part of their "reasonable" interconnection arrangements with CMRS; this

^{34/} *Id.* at Section 101, to be codified at 47 U.S.C. Sections 251(b)(5), 252(d)(2).

^{35/} *Id.*, to be codified at 47 U.S.C. Section 251(i). See also H.Rep. 104-458, 104th Cong., 2d Sess. 123 (1996) ("subsection 251(i) makes clear the conferee's intent that the provisions of new section 251 are in addition to, and in no way limit or affect, the Commission's existing authority regarding interconnection under section 201 of the Communications Act.").

point is no longer subject to debate, but it requires Commission action to become a reality.^{36/} Bill and keep is a reasonable way to ordain this result while more permanent long-term mutual compensation methodologies are established.

IV. CONCLUSION

After ten years of frustrated efforts to impose a effective mutual compensation policy on LEC-to-CMRS interconnection, the Commission has appropriately tentatively concluded that further -- and immediate -- action must be taken. The imposition of interim bill and keep policies on the transportation and termination of telephone calls between LEC networks and CMRS networks would provide the needed impetus for reaching long-term, economically efficient mutual compensation solutions.

For the reasons discussed herein, the Commission should take immediate action to adopt bill and keep on an interim basis. The Commission has plenary jurisdiction over LEC-CMRS interconnection and should exercise its authority to preempt inconsistent state interconnection policies and ensure that there are not unnecessary

^{36/} Second Report and Order, *supra*. fn. 6, at para. 230; NPRM and NOI at para. 107; NPRM at para. 1.

-19-

or unreasonable CMRS entry barriers that would hinder the development of nationwide wireless networks.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

By, 

Robert S. Foosaner
Senior Vice President -
Government Affairs

Lawrence R. Krevor
Director - Government Affairs

Laura L. Holloway
General Attorney

Nextel Communications, Inc.
800 Connecticut Avenue, N.W.
Suite 1001
Washington, D.C. 20006
202-296-8111

Dated: March 4, 1996

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 4th day of March 1996, I caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery or first-class mail, postage prepaid to the following:

Chairman Reed E. Hundt
Federal Communications Commission
Suite 814
1919 M Street, NW
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
Suite 802
1919 M Street, NW
Washington, D.C. 20554

Commissioner Andrew C. Barrett
Federal Communications Commission
Suite 826
1919 M Street, NW
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
Suite 844
1919 M Street, NW
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
Suite 832
1919 M Street, NW
Washington, D.C. 20554

Rudolfo M. Baca
Senior Legal Advisor
Federal Communications Commission
Room 802
1919 M Street, NW
Washington, D.C. 20554